

New Mexico State Legislature Courts, Corrections and Justice Committee

2012 INTERIM REPORT

Legislative Council Service 411 State Capitol Santa Fe, NM

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2012 Interim Summary

Courts, Corrections and Justice Committee 2012 Interim Summary

The interim began with an update from the Corrections Department's (NMCD) new secretary, Gregg Marcantel. The committee was briefed on the goals of the new administration and the changes being implemented within the department, including updates to its code of ethics, audit programs that identify inconsistencies in standards, revision of mission statements, development of strategic objectives and restructuring and changes in task assignments to make the department run more efficiently. Secretary Marcantel hopes to implement more vigorous tools for self-audit and is considering adopting an auditing program that has been implemented in Arizona. In a discussion that began last interim on solitary confinement and with encouragement from the committee, Secretary Marcantel assured the committee that the department is working with the Vera Institute of Justice on evaluating the policies and use of administrative segregation and solitary confinement in New Mexico prisons.

The committee held a meeting at the Central New Mexico Correctional Facility in Los Lunas where it heard a prison population forecast and a report from the Legislative Finance Committee (LFC). The population at state correctional facilities reached a peak of 6,873 in fiscal year 2007. Thereafter, the inmate population declined over a two-year period and then began to grow at a slow pace. The New Mexico Sentencing Commission attributes the stability of the state inmate population since 2007 to a number of factors, including a law that awards earned meritorious deductions to nonviolent offenders during the initial 60-day evaluation period of receipt by the NMCD; drug courts and other problem-solving courts; the ability of the Parole Board to impose sanctions other than a return to prison for certain technical parole violations; and the fact that filings in district courts for criminal cases have decreased by five percent.

The LFC report described how to reduce recidivism, improve public safety and save money. Some of the issues discussed by the program evaluators and the department were evidence-based programming and implementation, community-based resources, caseloads of probation and parole officers, community corrections and intensive supervision programs and how to address the problem of inmates not qualifying for parole and serving their parole periods incarcerated. At that meeting, the committee heard from the chief public defender and the general counsel of the attorney general about the number and associated costs of parole hearings for sex offenders. Many of these offenders are serving their parole time as incarcerated inmates due to statutory requirements and unintended consequences in the law.

Later in the interim, the committee heard about the overcrowding problem facing the largest jail in the state, the Metropolitan Detention Center (MDC). The MDC is the forty-seventh largest jail in the nation. Officials from Bernalillo County identified immediate, short-term and long-term solutions to deal with the population, including amending programs for probation and parole to incorporate a progressive sanctions program; reviewing internal policies and procedures to identify unrealized efficiencies; alternative treatment programs in the community with supervision; relocating pretrial services; identifying community resources to increase treatment and services; enhancing prisoner transport; increasing staffing levels; day-reporting with work

detail as an alternative to incarceration; and renovation of the Regional Correctional Center to house inmates.

The committee held a joint meeting with the Water and Natural Resources Committee in Truth or Consequences on water adjudication issues. The committees heard presentations on and discussed, among other things, the compromise and settlement agreement between the Elephant Butte Irrigation District and the El Paso County Water Improvement District; the Pecos River Settlement issues; the water rights adjudication process; and the hot springs in Truth or Consequences. While in the area, both committees toured Spaceport America and discussed and debated the status of limited liability granted to spaceport operations. A panel presented a bill, previously introduced, that would expand immunity to include, among other things, immunity for manufacturers and suppliers of components or services used by spaceflight entities.

The judiciary presented its budget and proposed legislation in the fall. The courts continue to implement new technologies, including a case management system, which should be fully implemented in all of New Mexico's magistrate and district courts by the end of 2012. The judiciary requested a 3% increase to court base budgets to allow the courts to fill critical vacant positions, upgrade aging systems, address security, maintenance and information technology needs and continue funding drug courts and other problem-solving courts. Although there is a need for 23 new judgeships statewide, the judiciary requested only nine. The judiciary proposed 10 pieces of legislation, including bills that would modify qualifications for metropolitan court judges to make them consistent with constitutional requirements for appellate and district court judges; allow retired peace officers to return to work as court security personnel without suspension of retirement benefits; allow sitting magistrates in districts with a population over 200,000 to run for election as long as there is no break in service; provide penalty assessments for certain Motor Vehicle Code violations; and make the courts responsible for processing all traffic citations to reduce the confusion and wasted resources of having both the courts and the Motor Vehicle Division of the Taxation and Revenue Department handle citations.

The committee was briefed on the Veterans Treatment Court created in the Second Judicial District Court in November 2011 to assist those veterans who are pulled into the justice system. Judges and staff provide pretrial services, supervision and case management. Treatment plans are created for each veteran in the program, and the program is having a positive impact on veterans, their families and communities.

Attorney General Gary King proposed 20 pieces of draft legislation for the 2013 session. The attorney general discussed the need to modernize certain statutes; to change the statute of limitations for certain crimes; to prohibit texting while driving; to address mortgage foreclosure issues; and to clarify the burglary statutes. The attorney general also informed the committee about his implementation of a Wage Theft Task Force that deals with wage theft such as time sheet fraud, employers forcing employees to work overtime without proper payment and employees working off the clock. The committee discussed many issues with the attorney general, including Medicaid fraud, domestic violence, government accountability and border protection issues.

The Children, Youth and Families Department (CYFD) discussed proposed changes to the Children's Code. There was some controversy with some of the changes that the CYFD was proposing, but no legislation was presented to the committee. The committee also heard presentations on problems that have arisen with public improvement districts (PID), specifically the Mariposa development. Homebuilders and developers expressed that PIDs are a good financing tool but acknowledged that the law should be amended to protect homeowners. The Attorney General's Office discussed its work with homeowners of the Mariposa development.

The committee heard from the League of Women Voters on the creation of an independent redistricting commission to assist in the process of redistricting every 10 years. Members of the league provided information on independent commissions in other states that vary in size from five to 14 members and how those states have placed restrictions and established criteria that should be considered when redistricting. Among other things, the committee and the panel discussed the politics of redistricting and the costs to the state. The estimated total cost of redistricting New Mexico in 2012 was \$8 million.

The committee heard a proposal from the Drug Policy Alliance (DPA) to decriminalize possession of up to eight ounces of marijuana and to reduce the penalty for possession of eight ounces or more from a fourth degree felony to a misdemeanor. The alliance argued that its proposal is very modest when compared to decriminalization laws in other states and spoke about the negative consequences of current enforcement policies and penalties, including damage to a person's ability to get a job, child custody and support, access to health care and high fines to low-income families. Discussion with the committee included actions in other states, legislation introduced in prior years and the effects of marijuana on health.

During the interim, the committee heard presentations on proposed uniform laws, missing persons and identification of human remains, changes to the Sunshine Portal Transparency Act, a study of the length of stay in detention facilities, prosecutions for leaving a child in a hot car, public financing of elections, modifications to the DNA Identification Act, hate crimes, attorney fees in contract cases, duty to report child abuse and the independent Public Defender commission. Of the 50 proposed bills presented and discussed, the committee endorsed 25.

Work Plan and Meeting Schedule

2012 APPROVED WORK PLAN AND MEETING SCHEDULE for the

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

The Courts, Corrections and Justice Committee was created by the New Mexico Legislative Council on May 9, 2012. Committee members are as follows:

Members

Rep. Al Park, Co-Chair Sen. Peter Wirth, Co-Chair

Sen. Rod Adair

Rep. Joseph Cervantes

Rep. Gail Chasey

Rep. Zachary J. Cook

Rep. David L. Doyle

Sen. Mary Jane M. Garcia

Rep. Nate Gentry

Sen. Clinton D. Harden, Jr.

Sen. Linda M. Lopez

Rep. Antonio "Moe" Maestas Sen. Richard C. Martinez

Rep. William "Bill" R. Rehm

Sen. John C. Ryan

Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon

Rep. Thomas A. Anderson Rep. Cathrynn N. Brown

Sen. Lisa K. Curtis

Rep. Brian F. Egolf, Jr.

Rep. Dennis J. Kintigh

Sen. Carroll H. Leavell

Rep. W. Ken Martinez

Sen. Cisco McSorley

Rep. Bill B. O'Neill

Sen. William H. Payne

Sen. John Pinto

Sen. Sander Rue

Sen. Michael S. Sanchez

Rep. Sheryl Williams Stapleton

Sen. David Ulibarri

Rep. Richard D. Vigil

Work Plan

During the 2012 interim, and as time permits, the committee proposes to address the following and recommend appropriate legislation:

- (1) oversee and monitor issues relating to corrections, correctional facilities, operations, private prisons, population, solitary confinement, prison reform, reentry and rehabilitation and the release of offenders serving life sentences;
- (2) review the operations of the judiciary and its projects, committees, specialty courts, budget and recommended legislation and examine issues relating to the Judicial Standards Commission, caseload of judges, duty to furnish district courthouses, truancy courts, magistrate security, magistrate qualifications and timing of judicial appointments;
- (3) examine issues relating to criminal justice and public safety, including criminal laws, procedures, public defenders, district attorneys and law enforcement issues;

- (4) examine juvenile justice issues and the implementation of the Cambiar model;
- (5) study water adjudication issues in a joint meeting with the Water and Natural Resources Committee;
- (6) discuss the current state of sexual assault in New Mexico and issues relating to sex offenders;
 - (7) examine missing persons issues and identification of human remains;
 - (8) study the creation of a redistricting commission or other redistricting reforms;
- (9) review proposals on elections, including public financing, independent expenditure committees and disclosure;
 - (10) examine whether statutory changes are needed with respect to horse racing;
 - (11) receive an update on the state's DNA identification system;
 - (12) review proposed legislation on child custody issues facing military families;
 - (13) review legislative proposals by the Uniform Law Commission;
- (14) review legislative proposals of the governor and the attorney general related to the work of this committee; and
 - (15) address related issues as appropriate.

Courts, Corrections and Justice Committee 2012 Approved Meeting Schedule

<u>Date</u> <u>Location</u>

June 7 Santa Fe

July 26-27 Los Lunas/Albuquerque

August 27-28 Elephant Butte/Spaceport

October 9-10 Santa Fe

November 29-30 Santa Fe

Agendas

TENTATIVE AGENDA for the FIRST MEETING of the COURTS, CORRECTIONS AND JUSTICE COMMITTEE

June 7, 2012 Room 322, State Capitol Santa Fe

Thursday, June 7

10:00 a.m. Call to Order

—Senator Peter Wirth and Representative Al Park, Co-Chairs

10:10 a.m. **Update from the Corrections Department**

—Gregg Marcantel, Secretary of Corrections

11:15 a.m. Development of Work Plan and Meeting Schedule for the 2012 Interim

—Committee Members and Staff

Public Comment

Adjourn

Revised: July 23, 2012

TENTATIVE AGENDA for the SECOND MEETING of the COURTS, CORRECTIONS AND JUSTICE COMMITTEE

July 26, 2012 Central New Mexico Correctional Facility 1525 Morris Road Los Lunas

July 27, 2012 Office of the Medical Investigator 1101 Camino de Salud NE Albuquerque

Thursday, July 26

9:30 a.m.	Call to Order —Representative Al Park and Senator Peter Wirth, Co-Chairs
9:35 a.m.	Approval of Minutes
9:40 a.m.	Prison Population Forecast —Tony Ortiz, Executive Director, New Mexico Sentencing Commission
10:00 a.m.	Program Evaluation: Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders; and Presentation of a Cost-Benefit Model —Dr. Jon Courtney, Program Evaluator, Legislative Finance Committee (LFC) —Jack Evans, Program Evaluator, LFC —Gregg Marcantel, Secretary of Corrections
12:15 p.m.	Lunch
1:00 p.m.	Sex Offender Parole and Parole Hearings —R. David Pederson, General Counsel, Office of the Attorney General —Jacqueline Cooper, Chief Public Defender —Sheri Stephens, Acting Director, Parole Board

2:00 p.m. Sex Offender Registration and Notification (Bill Draft #1)

—Representative Antonio "Moe" Maestas

3:00 p.m. **Public Comment**

Tour of Central New Mexico Correctional Facility

Recess

Friday, July 27

9:00 a.m. Office of the Medical Investigator: Welcome and Update

—Ian Paul, M.D., Forensic Pathologist, Office of the Medical Investigator (OMI)

9:15 a.m. Changes to the Sunshine Portal Transparency Act (Bill Draft #2)

- —Senator Sander Rue
- —Gwyneth Doland, Executive Director, New Mexico Foundation for Open Government
- —Josh Anderson, Political Coordinator, Council 18, American Federation of State, County and Municipal Employees

10:30 a.m. Missing Persons and Identification of Human Remains

- —Lupe Lopez-Haynes
- —Chuck Lopez
- —Ray Schultz, Chief of Police, Albuquerque Police Department
- —Regina Chacon, Bureau Chief, Law Enforcement Records Bureau, Department of Public Safety
- —Ian Paul, M.D., Forensic Pathologist, OMI
- —Peter W. Loomis, D.D.S., Forensic Odontologist, OMI

12:00 noon **Public Comment**

Adjourn

Revised: August 22, 2012

TENTATIVE AGENDA for the THIRD MEETING of the

WATER AND NATURAL RESOURCES COMMITTEE and the

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

August 27-28, 2012 Ralph Edwards Auditorium 400 West Fourth Street Truth or Consequences

Monday, August 27

9:30 a.m.	Call to Order
	—Representative Joseph Cervantes, Chair, Water and Natural Resources Committee
	—Senator Peter Wirth and Representative Al Park, Co-Chairs, Courts, Corrections and Justice Committee
9:35 a.m.	2008 Compromise and Settlement Agreement Between Elephant Butte
	Irrigation District and El Paso County Water and Improvement District Number 1
	—Steve Farris/Sarah Bond, Attorney General's Office
	—Steve Hernandez and Dr. Phil King, Elephant Butte Irrigation District
	—Chuck DuMars, Middle Rio Grande Conservancy District (Invited)
11:30 a.m.	Truth or Consequences Welcome
	—John Mulcahy, Mayor, Truth or Consequences
12:00 noon	Working Lunch
	Pecos River Settlement Lessons
	—Aron Balok, Pecos Valley Artesian Conservancy District (PVACD)
	—Bill Netherlin, PVACD Board and Local Farmer
	—Dudley Jones, Manager, Carlsbad Irrigation District
	—Greg Lewis, Interstate Stream Commission
2:30 p.m.	Water Rights Adjudication Process and Suggestions
	—Tessa Davidson (Tentative)

—Celina Jones, Administrative Office of the Courts

—Judge Jerald A. Valentine

-Scott A. Verhines, State Engineer

4:00 p.m. Spaceport Liability Issues (Bill Draft #3)

—Christine Anderson, Executive Director, Spaceport Authority

-Robert Desiderio, Sanchez, Mowrer & Desiderio PC, Counsel for

Virgin Galactic

—David Jaramillo, Gaddy Jaramillo Touchet, New Mexico Trial Lawyers

Association

5:00 p.m. Recess

Tuesday, August 28

9:00 a.m. Spaceport America Briefing

—Christine Anderson, Executive Director, Spaceport Authority

9:30 a.m. Travel to and Tour of Spaceport America

Adjourn

Revised: October 5, 2012

TENTATIVE AGENDA for the FOURTH MEETING of the COURTS, CORRECTIONS AND JUSTICE COMMITTEE

October 9-10, 2012 Room 307, State Capitol Santa Fe

Tuesday, October 9

9:30 a.m.	Call to Order —Representative Al Park and Senator Peter Wirth, Co-Chairs
9:35 a.m.	Report from the Judiciary: Unified Budget and Proposed Legislation (Bill Drafts #4-13) —Petra Jimenez Maes, Chief Justice, New Mexico Supreme Court —Arthur W. Pepin, Director, Administrative Office of the Courts
12:00 noon	Working Lunch
12:30 p.m.	 Length of Stay in Detention Facilities: A Profile of Seven Counties Linda Freeman, Deputy Director, New Mexico Sentencing Commission (NMSC) Tony Ortiz, Executive Director, NMSC Grace Philips, Loss Prevention Attorney, New Mexico Association of Counties
1:30 p.m.	Legislative Proposals from the Attorney General (Bill Drafts #14-33) —Gary King, Attorney General of New Mexico
3:30 p.m.	Proposed Changes to the Children's Code —Yolanda Berumen-Deines, Secretary of Children, Youth and Families —Jennifer Saavedra, General Counsel, Children, Youth and Families —Department (CYFD) —Ann Halter, Deputy General Counsel, CYFD —Ken Pifer, Deputy Director, Juvenile Justice Facilities, CYFD —Stephen Archuleta, Deputy Director, Juvenile Justice Field Services, CYFD

Public Comment

Recess

Wednesday, October 10

9:00 a.m. Uniform Law Commission: Proposed Legislation (Bill Drafts #34-36)

—Jack Burton, Uniform Law Commissioner

10:00 a.m. Public Improvement District: Mariposa Development

- —Justin Horwitz, Rodey Law Firm
- —Garret Price, Pulte Homes, New Mexico
- —Randy Traynor, Lobbyist, New Mexico Home Builders Association (HBA)
- —Vanessa Alarid, Director, Government Affairs, HBA
- —Karen Meyers, Director, Consumer Protection Division, Attorney General's Office

11:00 a.m. **Independent Redistricting Commissions**

- —Mary G. Wilson, Immediate Past President, League of Women Voters of the United States
- —Dick Mason, Leadership Team Member, League of Women Voters of New Mexico
- —Meredith Machen, Leadership Team Member, League of Women Voters of New Mexico

12:00 noon Prosecutions for Leaving Child in a Hot Car

- —Robert P. "Rick" Tedrow, 11th Judicial District Attorney, Division 1
- —Henry Valdez, Director, Administrative Office of the District Attorneys
- —Vincent J. Ward, Freedman Boyd Hollander, New Mexico Criminal Defense Lawyers Association

Public Comment

Adjourn

Revised: November 29, 2012

TENTATIVE AGENDA for the FIFTH MEETING of the COURTS, CORRECTIONS AND JUSTICE COMMITTEE

November 29-30, 2012 Room 307, State Capitol Santa Fe

Thursday, November 29		
10:00 a.m.	Call to Order —Senator Peter Wirth and Representative Al Park, Co-Chairs, Courts, Corrections and Justice Committee (CCJ)	
10:05 a.m.	Approval of Minutes	
10:10 a.m.	Decrease Penalties for Possession of Marijuana (Bill Draft #38) —Emily Kaltenbach, State Director, Drug Policy Alliance (DPA) —Tamar Todd, Senior Staff Attorney, DPA —Dan Abrahamson, Legal Director, DPA	
11:10 a.m.	 Second Judicial District's Veterans Treatment Court and Service Member Child Custody Act (Bill Draft #39) —Alan Martinez, Deputy Secretary, Veterans' Services Department —Amanda A. Pagan, Attorney, New Mexico Family Law, PC, and Chief Warrant Officer, New Mexico Army National Guard, Judge Advocate Office —Colonel Joe M. Romero, Jr., Staff Judge Advocate, New Mexico Joint Forces Headquarters 	
12:10 p.m.	Working Lunch	
12:20 p.m.	 Update on Jail Overcrowding in Bernalillo County —Tom Swisstack, Deputy County Manager for Public Safety, Bernalillo County —The Honorable Ted Baca, Chief Judge, Second Judicial District Court 	
1:30 p.m.	Public Financing of Elections (Bill Draft #40)	

—Viki Harrison, Common Cause New Mexico —Jim Harrington, Common Cause New Mexico

—Senator Peter Wirth

2:30 p.m. **Modifications to the DNA Identification Act (Bill Draft #41)** —John F. Krebsbach, Administrator, DNA Identification System —Marc Adams, Director, Scientific Evidence Division, Albuquerque Police Department —Margaret McLean, Assistant Attorney General 3:30 p.m. **Hate Crimes Against the Homeless (Bill Draft #42)** —Representative Bill B. O'Neill —Wendy Grace Evans, National Center On Child and Family Homelessness —Father Rusty Smith, Executive Director, St. Martin's Hospitality Center **Reciprocal Attorney Fees in Certain Civil Cases (Bill Draft #43)** 4:00 p.m. —Representative Joseph Cervantes —John P. Burton, Attorney, Rodey, Dickason, Sloan, Akin & Robb, P.A. **Public Comment** Recess Friday, November 30 9:00 a.m. Reconvene —Senator Peter Wirth and Representative Al Park, Co-Chairs, CCJ 9:02 a.m. **Duty to Report Abuse of Children (Bill Draft #44)** —Senator Lisa K. Curtis 9:30 a.m. **Corrections:** Legislative Proposals from the Corrections Department and the Legislative Finance Committee (Bill Drafts #45-50) —Aurora Sanchez, Deputy Secretary of Administration, Corrections Department (NMCD) —Joe W. Booker, Jr., Deputy Secretary of Operations, NMCD —Jon R. Courtney, Ph.D., Program Evaluator, Legislative Finance Committee (LFC) —Jack Evans, Program Evaluator, LFC

11:00 a.m. Independent Public Defender Commission

- —Representative Antonio "Moe" Maestas
- —Phyllis H. Subin, Attorney at Law

12:00 noon **Endorsement of Legislation**

—Committee Members

Public Comment

Adjourn

Minutes

MINUTES of the FIRST MEETING of the

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

June 7, 2012 Santa Fe, NM

The first meeting of the Courts, Corrections and Justice Committee was called to order by Senator Peter Wirth, co-chair, on June 7, 2012 at 10:17 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Peter Wirth, Co-Chair

Sen. Rod Adair

Rep. Gail Chasey

Rep. Zachary J. Cook

Sen. Mary Jane M. Garcia

Rep. Nate Gentry

Sen. Clinton D. Harden, Jr.

Sen. Linda M. Lopez

Rep. Antonio "Moe" Maestas

Advisory Members

Rep. Eliseo Lee Alcon

Rep. Thomas A. Anderson

Sen. Lisa K. Curtis

Rep. Brian F. Egolf, Jr.

Sen. Carroll H. Leavell

Rep. W. Ken Martinez

Sen. Cisco McSorley

Rep. Bill B. O'Neill

Sen. Sander Rue

Rep. Sheryl Williams Stapleton

Rep. Richard D. Vigil

Absent

Rep. Al Park, Co-Chair

Rep. Joseph Cervantes

Rep. David L. Doyle

Sen. Richard C. Martinez

Rep. William "Bill" R. Rehm

Sen. John C. Ryan

Rep. Mimi Stewart

Rep. Cathrynn N. Brown

Rep. Dennis J. Kintigh

Sen. William H. Payne

Sen. John Pinto

Sen. Michael S. Sanchez

Sen. David Ulibarri

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)

Douglas Carver, Staff Attorney, LCS

Leslie Porter, Research Assistant, LCS

Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, June 7

Call to Order

Senator Wirth welcomed committee members and guests.

Update from the Corrections Department

Gregg Marcantel, secretary of corrections, provided background on the current status of the Corrections Department, including steps that are currently in progress and those that have been completed recently. He introduced Deputy Secretary of Operations Joe W. Booker and Deputy Secretary of Administration Aurora B. Sanchez.

Regarding the progress made within the department, Secretary Marcantel informed the committee that the department has undertaken organizational restructuring and changes in task alignment in order to be more efficient. Critical positions within the department, including some division director positions, have been filled. The department has revised its mission and vision statements and has begun to develop strategic objectives.

Secretary Marcantel discussed the need for the department to increase the amount of self-auditing that takes place. Currently, the department is assessed by the American Correctional Association every three years. The department hopes to implement a more vigorous tool for auditing itself at least once each year and is considering adopting a color-based auditing program that has been implemented in Arizona.

The Corrections Department has updated its code of ethics and has instituted audit programs that identify inconsistencies in standards statewide. The secretary expressed the need for the department to adopt a new business model. Research in this area is being undertaken by the department in partnership with the University of New Mexico Anderson School of Business. The secretary also expressed concern about the number of people serving in-house parole in New Mexico and the associated costs.

The Corrections Department has awarded a health care contract with a term beginning June 1, 2012 and ending May 21, 2016 to Corizon. The contract will cost the department \$37.5 million per year, excluding pharmaceuticals; encompasses all medical services, dental services, psychiatric services and mental health services; and has a pharmaceutical component.

Members of the committee requested some additional information from Secretary Marcantel, including information regarding the department's budget. In response to questions from the committee, the secretary stated the department's willingness to collaborate with the Vera

Institute on studying the use of administrative segregation or solitary confinement at the Corrections Department and promised to keep the committee informed on the status of that study. The secretary also elaborated on specific facility conditions, capital requests and sex offender programs and parole in response to questions.

Development of Work Plan and Meeting Schedule for the 2012 Interim

Committee members discussed issues and possible topics for the committee and voiced their concerns and preferences on topics to be addressed during the interim. Committee members also discussed a possible joint meeting with the Water and Natural Resources Committee on water adjudication and other overlapping water issues.

Public Comment

Senator Wirth invited members of the audience to comment and to suggest other topics for consideration.

Adjournment

There being no further business before the committee, the first meeting of the Courts, Corrections and Justice Committee for the 2012 interim adjourned at 12:40 p.m.

MINUTES of the SECOND MEETING of the COURTS, CORRECTIONS AND JUSTICE COMMITTEE

July 26, 2012 Central New Mexico Correctional Facility 1525 Morris Road Los Lunas

July 27, 2012 Office of the Medical Investigator 1101 Camino de Salud NE Albuquerque

The second meeting of the Courts, Corrections and Justice Committee was called to order by Representative Al Park, co-chair, on July 26, 2012 at 10:04 a.m. at the Central New Mexico Correctional Facility (CNMCF) in Los Lunas.

Present

Rep. Al Park, Co-Chair

Sen. Peter Wirth, Co-Chair

Sen. Rod Adair (7/27)

Rep. Gail Chasey (7/26)

Rep. Zachary J. Cook (7/26)

Sen. Mary Jane M. Garcia (7/26)

Sen. Clinton D. Harden, Jr.

Sen. Linda M. Lopez

Rep. Antonio "Moe" Maestas (7/26)

Sen. Richard C. Martinez

Rep. William "Bill" R. Rehm

Sen. John C. Ryan (7/27)

Rep. Mimi Stewart

Absent

Rep. Joseph Cervantes

Rep. David L. Doyle

Rep. Nate Gentry

Advisory Members

Rep. Thomas A. Anderson

Sen. Lisa K. Curtis

Rep. Brian F. Egolf, Jr.

Rep. Dennis J. Kintigh

Sen. Carroll H. Leavell

Rep. W. Ken Martinez

Sen. Cisco McSorley

Rep. Bill B. O'Neill

Sen. Sander Rue (7/27)

Sen. David Ulibarri (7/26)

Rep. Richard D. Vigil (7/27)

Rep. Eliseo Lee Alcon

Rep. Cathrynn N. Brown

Sen. William H. Payne

Sen. John Pinto

Sen. Michael S. Sanchez

Rep. Sheryl Williams Stapleton

Guest Legislators

Rep. Alonzo Baldonado (7/26)

Rep. Nora Espinoza (7/26)

Rep. Miguel P. Garcia (7/26)

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS) Douglas Carver, Staff Attorney, LCS Leslie Porter, Research Assistant, LCS Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and written testimony are in the meeting file.

Thursday, July 26

Welcome and Introduction

Representative Park welcomed committee members and guests. Committee members introduced themselves to the audience. Joseph Garcia, warden of the CNMCF, welcomed the committee to the facility.

Prison Population Forecast

Tony Ortiz, executive director of the New Mexico Sentencing Commission (NMSC), told the committee that, at the end of 2010, approximately 7.1 million people were under the supervision of federal or state adult correctional authorities in the United States. One-half of state departments of corrections reported decreases in their prison population during 2010. The New Mexico state inmate population reached a peak of 6,873 in fiscal year (FY) 2007. After 2007, the inmate population declined over a two-year period and then began to grow at a slow pace. The female inmate population in New Mexico has been trending upward. Currently, the female inmate population composes approximately 10 percent of the total inmate population. On

June 1, 2012, the operational capacity for male inmates in the New Mexico Corrections Department (NMCD) was 6,431 beds, and the operational capacity for female inmates was 668 beds.

The NMSC attributes the stability of the total New Mexico state inmate population since FY 2007 to a number of factors. In 2006, Senate Bill 21 (Chapter 82) authorized the award of earned meritorious deductions to non-violent offenders during the initial 60 days of receipt by the NMCD. The NMSC estimates that the enactment of SB 21 yields an annual savings of 81 prison beds. In FY 2009 and FY 2012, new filings in district courts for criminal cases decreased by five percent. Other factors, such as felony drug court programs and the ability of the Adult Parole Board to impose sanctions other than a return to prison for parole violators, also contribute to the stability of New Mexico's inmate population.

The NMSC forecasts that New Mexico's inmate population will continue to grow slowly. The projected high count for the male population is 6,224 for FY 2013, 6,297 for FY 2014 and 6,879 for FY 2022. Because of the smaller size of the female population, it is more difficult to accurately forecast. The projected high count for the female population is 644 for FY 2013, 640 for FY 2014 and 718 for FY 2022.

Program Evaluation: Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders; and Presentation of a Cost-Benefit Model

Dr. Jon Courtney, program evaluator for the Legislative Finance Committee (LFC), Jack Evans, program evaluator for the LFC, and Gregg Marcantel, secretary of corrections, presented an LFC report regarding the NMCD. Dr. Courtney stated that the growing prison population is projected to exceed the current NMCD capacity within the next decade. In FY 2011, New Mexico spent almost \$300 million to house an average of 6,700 offenders and to supervise an additional 18,000 offenders on probation or parole. The average annual cost per inmate in New Mexico was \$34,000 in FY 2010.

Dr. Courtney told the committee that the NMCD needs more resources and needs to utilize existing resources more efficiently. The department would benefit from using more evidence-based programs to reduce recidivism, lower costs and increase public safety. According to the Pew Center for the States and the Washington State Institute for Public Policy, evidence-based programs are the best return on taxpayer investments. Less than one-fourth of the 40 programs that the NMCD runs for prisoners are evidence-based. Dr. Courtney reported the key findings of the report. Reducing recidivism by 10 percent could save \$8.3 million in prison costs and reduce victimization costs by an estimated \$40 million. In-house parole (IHP) exists as a result of difficulty finding placements for certain prisoners, including sex offenders and other hard-to-place inmates, and inmate refusal to participate in the parole process. IHP costs \$10 million each year. The report found that the NMCD does not adequately target treatment based on the risks or needs of the clients. Programs that have been proven to work in

reducing recidivism on the national level have been cut by the NMCD, have long waiting lists and sometimes lack fidelity.

Mr. Evans told the committee that the NMCD should utilize the medical and geriatric parole programs established in statute. The report further recommends that the NMCD report on the medical and geriatric parole programs, prepare an implementation plan for administering and using a valid risk and needs assessment tool and work with research experts in the fields of correctional substance abuse treatment to assess program design deficiencies as well as take steps to increase the efficient use of NMCD funding as set out in the LFC report.

Secretary Marcantel told the committee that his department is aware of and attempting to correct many of the issues addressed in the LFC report. Aurora Sanchez, deputy secretary of administration, NMCD, discussed some of the issues the department faces with the Interagency Behavioral Health Purchasing Collaborative and OptumHealth. OptumHealth has been unresponsive with respect to certifying providers requested by the NMCD. The NMCD is looking for providers in order to move inmates into a transitional setting before they are released and to otherwise assist in the release of inmates. Joe W. Booker, Jr., deputy secretary of operations, NMCD, told the committee that the department is working to find placement for hard-to-place inmates. The department wants to reduce the number of inmates on IHP in order to reduce costs and free up some beds. Secretary Marcantel told the committee that the NMCD is working diligently to address the problems identified in the report.

The committee asked questions and discussed policy options and various issues of concern, including parole violations; length of time that inmates spend in IHP; IHP costs; inmate transition and reentry upon release from the NMCD; effectiveness of various corrections programs; and the NMCD budget.

Sex Offender Parole and Parole Hearings

R. David Pederson, general counsel for the Office of the Attorney General, told the committee of the upcoming and increasing need for sex offender parole hearings. Certain sex offenders are released on parole for an indefinite term up to 20 years or for the remainder of their lives. Those offenders are eligible for review hearings before the Parole Board five years after release and then at two-and-one-half-year intervals thereafter, as established in Section 31-21-10.1 NMSA 1978, to determine whether they should remain on parole. In 2012, nine people are eligible for these hearings, with seven hearings conducted and another two scheduled for September. Mr. Pederson projected that these hearings could increase to 39 by 2015. He and Jacqueline Cooper, chief public defender, informed the committee that they have put together a set of procedures to follow for these unique hearings. They and Sheri Stephens, acting director of the Parole Board, emphasized the need for funding in order to meet the requirements of the statute.

Committee members asked questions and discussed policy options. Sandy Deitz, chair of the Parole Board, joined the discussion and clarified some points on the functioning of the Parole Board.

Approval of Minutes

The minutes of the previous meeting were approved by the committee.

Sex Offender Registration and Notification

Representative Maestas presented the committee with draft legislation based on House Bill 298 (2011), which unanimously passed both houses of the legislature but was vetoed by Governor Martinez. He told the committee that the bill addresses many problems with current sex offender registration, including the heavy burden currently placed on sheriffs' offices. Instead of requiring renewal of registration every 90 days or annually, the bill allows for verification of registration after notice. The bill requires more information from sex offenders upon registration, including the provision of email addresses, monikers, screen names used on social networking sites, cell and other phone numbers, license plate numbers, descriptions of vehicles, schools the offenders are attending and copies of passports.

Members of the committee asked questions and discussed the draft legislation.

Tour of the CNMCF

Committee members, staff and members of the public toured the CNMCF.

Recess

The committee recessed at 4:15 p.m.

Friday, July 27

The meeting was reconvened by Representative Park at 9:19 a.m.

Office of the Medical Investigator: Welcome and Update

Amy Boulé, director of operations, Office of the Medical Investigator (OMI), welcomed the committee to the OMI facility and discussed the history and importance of the OMI in New Mexico. Ms. Boulé told the committee that in 1973, New Mexico transitioned from a county coroner system to a new system that provided for a statewide medical examiner based at the University of New Mexico (UNM) School of Medicine. She discussed how the OMI provides a quality death investigation system and some of the duties of the OMI, including determining the cause and manner of death; testifying in court; and discovering emerging trends in causes of death to facilitate and support prevention measures. She spoke of how the OMI attracts high-quality forensic pathologists and how its training produces well-trained new forensic pathologists. The OMI also focuses on public health issues specific to New Mexico. The OMI is accredited by the National Association of Medical Examiners and the College of American

Pathologists. OMI funding comes from state appropriations and the UNM Department of Pathology, as well as from various contracts, fees and grants.

Committee members asked questions and discussed various issues concerning the OMI, including manner of death classification as reported on death certificates; autopsy protocol, particularly in culturally sensitive situations; how the OMI handles organ donations; and the cost of transporting bodies that have been in OMI custody back to the families and which entities are responsible for that cost.

Changes to the Sunshine Portal Transparency Act

Senator Rue presented a bill draft to the committee based on Senate Bill 30 (2012), which passed both houses of the legislature last session but in different forms. The bill would have required that the names of all state employees be listed on the sunshine portal alongside their positions and salaries.

Josh Anderson, political coordinator, Council 18, American Federation of State, County and Municipal Employees, told the committee that he wants to work with the legislature to include more on the sunshine portal. He stated, however, that taxpayers deserve to know much more than the salary of every public employee. Taxpayers are entitled to know about the recipients of and the amount of money spent on various contracts. He stated that if the salary of every public employee is allowed to be listed, then the salaries of those who work for a business that contracts to do government work, such as in prisons, health care and the Motor Vehicle Division of the Taxation and Revenue Department, should also be listed on the sunshine portal.

Gwyneth Doland, executive director of the New Mexico Foundation for Open Government (FOG), told the committee that the FOG would like to provide as much information as possible on the sunshine portal. She stated that information that is public record and is subject to the Inspection of Public Records Act should be on the sunshine portal. Ms. Doland pointed out that most state agencies do not list information that is open to the public on their web sites and that some state agencies do not list contact information for records custodians on their web sites as the law requires. She admitted that there are records and information that need to be made public and should be on the portal and conceded that the names of public employees are the non-controversial information or the "low-hanging fruit".

Committee members discussed the issues with the panel. Members were concerned about the priorities set forth in the bill and, in general, how the portal is being used. Committee members brought up various examples of contracts and other governmental activities that would benefit from the portal and disclosure. Members also discussed the move toward privatization of government work and how that would impact the portal. Senator Rue reminded the committee that the Sunshine Portal Transparency Act is a repository for all public information and, ideally, all information that is available to the public by law should be included on the portal.

Missing Persons and Identification of Human Remains

Lupe Lopez-Haynes told the committee that her sister, Beatrice Lopez-Cubelos, has been missing since September 1989. She told the committee that there is no state or federal law that requires medical examiners to put information into a database. Ms. Lopez-Haynes told the committee that she would like the legislature to pass legislation that would require that medical examiners place information on missing persons into databases that are accessible nationwide; that would improve training for police officers in investigating missing persons; and that would make dental records, fingerprints and DNA mandatory for all men, women and children.

Ray Schultz, chief of police at the Albuquerque Police Department (APD), told the committee that the AMBER alert law has been very effective. He told the committee that missing persons are especially problematic because, in some situations, adults are missing because they choose to be. The APD works closely with the OMI in cases that involve unidentified remains. The APD is also in the process of creating a Child Abduction Response Team (CART). Eventually, there will be five CARTs in New Mexico, positioned for regional response. The teams involve local law enforcement and the Federal Bureau of Investigation. CART certification happens at the federal level. The APD has also implemented a silver alert, which functions similar to an AMBER alert but serves the elderly. Unlike the AMBER alert, the silver alert is not written into statute and the media is not legally obligated to broadcast these alerts.

Regina Chacon, bureau chief of the Law Enforcement Records Bureau at the Department of Public Safety (DPS), told the committee that the DPS has created a reference manual for law enforcement regarding missing persons. When a person is missing, the person is entered into the National Crime Information Center database immediately. The DPS provides resources for families and sometimes acts as a liaison between family members and law enforcement. Ms. Chacon told the committee that CART training has been available across the nation for five years, but that New Mexico has experienced difficulty implementing the teams. She stressed the need for CART in New Mexico. Ms. Chacon told the committee that, pursuant to statute, the DPS issues an endangered person advisory to the media when children, adults or elderly people are missing. The program has experienced a limited amount of media cooperation.

Dr. Peter W. Loomis, forensic odontologist, OMI, told the committee that the OMI has 90 dedicated staff members. The OMI is responsible for identifying human remains, which is sometimes very difficult. In 2011, the OMI was responsible for identifying approximately 5,300 cases of unidentified remains. The OMI was able to identify 99 percent of these. When a person is identified, the OMI reports it to law enforcement and does not disclose the information to the media. Often, remains are burned, fragmented or decomposed. Dr. Loomis told the committee that the OMI often utilizes the National Missing and Unidentified Persons System (NamUs) when identifying remains. NamUs is available to anyone and allows users to input information, including graphics, that may help someone identify missing persons.

Dr. Loomis also suggested that requiring doctors and dentists to supply records within 30 days after a person is reported missing would considerably lessen the amount of time it takes to identify remains. Mandatory input into the NamUs would also make the identification of missing persons more efficient. Wendy P. McQuade, Ph.D., forensic anthropologist, Terry Coker, deputy medical investigator, and Clarissa Krinsky, M.D., forensic pathologist, contributed to the discussion regarding the work of the OMI.

Committee members asked questions and discussed policy options. The panel of presenters clarified various issues to members of the committee. The committee and presenters discussed procedure that is followed when identified remains are unclaimed.

Adjournment

There being no further business before the committee, the second meeting for the 2012 interim adjourned at 12:20 p.m.

MINUTES of the THIRD MEETING

of the

WATER AND NATURAL RESOURCES COMMITTEE and the

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

August 27-28, 2012 Ralph Edwards Auditorium Truth or Consequences, NM

The third meeting of the Courts, Corrections and Justice Committee and the Water and Natural Resources Committee was called to order by Representative Joseph Cervantes on August 27, 2012 at 9:50 a.m. at the Ralph Edwards Auditorium in Truth or Consequences.

Courts, Corrections and Justice Committee Attendance:

Present

Rep. Al Park, Co-Chair

Sen. Peter Wirth, Co-Chair

Sen. Rod Adair (8/27)

Rep. Joseph Cervantes

Rep. Gail Chasey (8/27)

Sen. Mary Jane M. Garcia (8/27)

Sen. Clinton D. Harden, Jr.

Sen. Linda M. Lopez (8/27)

Rep. Antonio "Moe" Maestas

Sen. Richard C. Martinez

Rep. William "Bill" R. Rehm

Rep. Mimi Stewart (8/27)

Absent

Rep. Zachary J. Cook

Rep. David L. Doyle

Rep. Nate Gentry

Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon

Rep. Thomas A. Anderson

Sen. Lisa K. Curtis (8/28)

Rep. Brian F. Egolf, Jr.

Rep. Dennis J. Kintigh

Rep. W. Ken Martinez

Sen. Cisco McSorley

Rep. Bill B. O'Neill

Sen. John Pinto

Sen. Sander Rue (8/27)

Sen. David Ulibarri

Rep. Richard D. Vigil

Rep. Cathrynn N. Brown

Sen. Carroll H. Leavell

Sen. William H. Payne

Sen. Michael S. Sanchez

Rep. Sheryl Williams Stapleton

(Attendance dates are noted for members not present for the entire meeting.)

Guest Legislator

Rep. Debbie A. Rodella

Staff

Jon Boller, Legislative Council Service (LCS) Maha Khoury, LCS Douglas Carver, LCS Cassandra Jones, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, August 27

Members of the committee introduced themselves.

2008 Compromise and Settlement Agreement Between Elephant Butte Irrigation District (EBID) and El Paso County Water and Improvement District Number 1 (EPD1)

Steve Farris and Sarah Bond, Office of the Attorney General, presented the state's rationale for challenging the Bureau of Reclamation's release of water from Elephant Butte Dam without obtaining permission from the Rio Grande Compact Commission or the state engineer. Mr. Farris began by noting that, currently, the Rio Grande below the dam is full, that 100% of that water is going to Texas and that 100% of that water is New Mexico Compact credit water that was released without the state's permission. The 2008 operating agreement between the EBID, EPD1 and the Bureau of Reclamation, he said, resulted in an allocation of only 10 inches of surface water per acre this year from Elephant Butte Dam to New Mexico farmers, while giving 30 inches per acre to El Paso farmers. Mr. Farris explained that New Mexico is suing the Bureau of Reclamation because the:

"Reclamation stole 10.9 billion gallons (33,000 acre feet) of New Mexico Compact credit water and delivered it to Texas in 2011;

Reclamation's operating agreement gives more surface water to Texas and forces New Mexico farmers to rely more heavily on groundwater;

Reclamation's operating agreement has taken up to 170,000 acre feet of water from New Mexico farmers . . .; and

Reclamation submitted a 2011 mid-year "water audit" where 65,000 acre feet of water . . . from New Mexico's savings account was relabeled as "Usable Water".".

He estimated that the total economic cost to the state of losing the suit would be \$183 million per year, with a loss of 1,000 jobs. Mr. Farris said that in the Lower Rio Grande region, continuing to follow the operating agreement will result in a loss of aquifer recharge, a loss of surface water storage in Elephant Butte, the loss of a sustainable supply of water for farmers, the loss of a sustainable water supply for Las Cruces and the destruction of the aquifer that supports 200,000 people in southern New Mexico. Moreover, he noted, the agreement threatens the state's ability to store water in most of the state's northern reservoirs, which means there will be less water available for farmers and municipalities in the Middle Rio Grande region and less water to deal with endangered species in that region. Finally, he said that losing the suit would mean that the state would continue to lose control of its water to the federal government.

Steve Hernandez and Phil King, representing the EBID, explained how the EBID, the EPD1 and the Bureau of Reclamation reached an agreement on the operation of the Rio Grande Project and how the operating agreement avoided litigation that would have ended up in the U.S. Supreme Court. Mr. Hernandez said that the EPD1 complained that it was not getting its full allocation of project water due to the amount of ground water pumping occurring in New Mexico north of the Texas border. Fearing a lawsuit that would end up in the U.S. Supreme Court and the threat of having all of the EBID's ground water pumping cut off, he explained, the two irrigation districts and the bureau agreed upon a new operating agreement to address the allocation of project water between the two districts. The reduced allocation of surface water to the EBID is made up for by allowing the EBID to use ground water to make up the difference, he explained. Dr. King disputed the attorney general's assertion that the state faces jobs losses and economic damages due to the operation agreement. He noted that agricultural production was up and that drought is the key reason for the EBID's low allotments of water. The reason the EPD1 is receiving more water this year, he explained, is because it had lots of carryover water from previous years, whereas the EBID did not.

Truth or Consequences Welcome

John Mulcahy, mayor of Truth or Consequences, welcomed the committees to Ralph Edwards Auditorium and the city. Mayor Mulcahy informed the committees that the city commission had taken a bold step to preserve the city's hot springs by passing a one-year moratorium on domestic well drilling within the city. He explained that there are a lot of wells being drilled in the city that are not for drinking water, yet that water is being disposed of through the city's sewer system. Some 146 well permits have been issued in an 11-acre area, he noted. The moratorium will allow the city to study the effects of the new wells on the city's existing wells and resources and help ensure that the city can protect its resources in the future. When asked about the effect of low lake levels on the city, he replied that it is always a negative when there is low water in the reservoir. He also said that Spaceport American is a priority for the city.

Pecos River Settlement Issues

Greg Lewis, Interstate Stream Commission (ISC), gave a brief history of the Pecos River Settlement, which was entered into by the parties in 2003 (and was implemented in 2009) to address Pecos River Compact compliance issues and bring the state into compliance with the court's 1988 amended decree. The objectives of the settlement, he explained, were to ensure permanent compliance with the Pecos River Compact and decree; increase and stabilize the water supply for the Carlsbad Irrigation District (CID); and reduce the likelihood of a priority call affecting ground water users in the Roswell Basin and bring the basin back into hydrologic balance. This required the retirement of up to 6,000 acres of irrigation rights within the CID and 11,000 acres within the Pecos Valley Artesian Conservation District (PVACD), along with the augmentation pumping of up to 35,000 acre-feet per year as needed. Mr. Lewis explained that 2011 was the first year that any augmentation pumping was required (with nearly 13,000 acrefeet pumped from March to October), and that the ISC has been pumping continuously since then (approximately 17,000 acre-feet since last November). All pumping has been to augment CID farmers' use; none has been required for deliveries to Texas, he noted. Addressing overall performance of the settlement, Mr. Lewis said that it is working (New Mexico has a supply credit with Texas, and augmentation pumping has provided significant additional supply to the CID), but that the extraordinary drought has precluded meeting settlement supply targets for the CID.

Aron Balock and Bill Netherland, PVACD, said the settlement has to be viewed in context — without an agreement, things could be much worse, even though with hindsight some things could have been done differently. It was local people working together, they noted, that allowed the parties to come to a solution, even if things are not working perfectly.

Charlie Jerva, CID, said that even as a senior water rights owner, he has been hurt by the drought, though on the positive side, 50% more water has been available to him than would have been the case without the settlement. Dudley Jones, CID, described the severity of the drought over the past two years and how this has resulted in allocations of only 1.4 and .9 acre-feet of water per acre in the CID in 2011 and 2012. These allocations would have been half those amounts without the augmentation pumping, he noted, though augmentation pumping has not been able to keep allocations close to the 100-year annual allotment average of 2.41 acre-feet.

Water Rights Adjudications Process and Suggestions

Judge Jerald Valentine outlined what he did in certain court orders to improve the process of adjudications, including deciding certain stream system issues up front, providing notice provisions for posting of issues for nonparticipating parties, updating requirements for address changes of parties and supporting the Joe M Stell Ombudsman Program.

Celina Jones, Administrative Office of the Courts, noted that a lot of what the courts are doing now is based on Judge Valentine's suggestions. She explained that there are now dedicated water judges for all adjudications, improved customer services that make things more accessible to claimants and in the Hidalgo County Animas Underground Basin adjudication, an opportunity to apply a new case management system. She explained that the Animas adjudication all stream

issues will be resolved first and that all claims between the 300 or so claimants will be resolved at one time, rather than later in the process.

Darcy Bushnell, Joe M Stell Ombudsman Program, reviewed the adjudications process from the individual claimant's perspective, from the initial notice of the suit through the final inter se process, and the roles that the courts, the state engineer and the ombudsman play in the process.

Scott Verhines, state engineer, began by noting that the current value of water rights in New Mexico is estimated to be from \$16 billion to \$18 billion and that adjudicating those rights is of prime importance to the state. He went on to list 21 measures that the state engineer, the legislature and the courts have changed over the past 20 years to improve the process. Greg Ridgley, deputy chief counsel of the Office of the State Engineer, outlined seven suggestions for improving the adjudications process, noting that there is always a tension between fairness and efficiency in the process.

Spaceport Liability Issues (Draft Bill #3)

Christine Anderson, executive director of the Spaceport Authority, told the committees that the spaceport is committed to providing a tourist experience for those that stay on the ground as well as passengers. She told the committees that there have been 15 vertical launches at Spaceport America, with two additional launches scheduled in the coming months. Spaceport America anticipates being financially self-sufficient in 2014. Ms. Anderson referred the committee to draft bill #3, a bill that would allow fully informed participants to hold harmless flight companies. The waiver would only apply to the passengers and would not protect flight companies if property or people on the ground were damaged as a result of space flight. New Mexico currently has informed consent legislation that holds the operator of the spacecraft harmless but does not protect manufacturers or suppliers. Current legislation will sunset in 2018.

Robert Desiderio, counsel for Virgin Galactic from Sanchez, Mowrer & Desiderio PC, told the committees that four other states have enacted informed consent legislation: Florida, Colorado, Virginia and Texas. The proposed legislation shares the greatest similarity to statutes in Texas and affords the greatest protection for operators, manufacturers and suppliers. The current New Mexico statute refers to federal law for definitions of terms while the proposed legislation defines the terms. The proposed legislation also extends protections to manufacturers, suppliers, employees, managers, directors and officers.

David Jaramillo from Gaddy Jaramillo Touchet, representing the New Mexico Trial Lawyers Association, told the committees that New Mexico law has traditionally held businesses and people responsible for negligent conduct. He stated that New Mexico tort law provides protections for businesses and people, and additional protections do not need to be imposed by legislation. He told the committees that business should not be conducted at any cost and that the proposed legislation provides a great protection for those that might cause the greatest harm. Mr. Jaramillo told the committees that there is no proof or evidence that companies have chosen

other spaceports rather than Spaceport America because of the informed consent legislation. Currently, businesses and people are only held liable for an accident after a jury of 12 citizens determines that a product or behavior is defective or finds negligence.

Members of the committees and the panel discussed the benefits of and concerns about the proposed legislation. Among other things, members discussed: the contribution of Spaceport America to the economic development of the surrounding areas; the ability of Spaceport America to attract tenants with and without expanded informed consent legislation; tort law and policy issues; state funds appropriated to Spaceport America; and safety concerns associated with space flight.

Recess

The committees recessed at 5:23 p.m.

Tuesday, August 28

Travel to and Tour of Spaceport America

Christine Anderson and other members of the Spaceport Authority and Virgin Galactic led members and staff of the committees on a tour of Spaceport America.

Adjournment

There being no further business before the committees, the third meeting of the Courts, Corrections and Justice Committee and the Water and Natural Resources Committee for the 2012 interim adjourned at 1:38 p.m.

MINUTES of the **FOURTH MEETING** of the

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

October 9-10, 2012 Room 307, State Capitol Santa Fe

The fourth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Peter Wirth, co-chair, on October 9, 2012 at 9:50 a.m. in Room 307 of the State Capitol.

Present Absent

Rep. Al Park, Co-Chair Sen. Rod Adair

Sen. Peter Wirth, Co-Chair Rep. Zachary J. Cook Rep. Joseph Cervantes Rep. David L. Doyle Rep. Gail Chasey Rep. Nate Gentry

Sen. Mary Jane M. Garcia Sen. John C. Ryan

Sen. Linda M. Lopez Rep. Antonio "Moe" Maestas

Sen. Richard C. Martinez

Rep. William "Bill" R. Rehm

Rep. Richard D. Vigil (9/10)

Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon	Rep. Cathrynn N. Brown
Rep. Thomas A. Anderson	Sen. Lisa K. Curtis
Rep. Dennis J. Kintigh	Rep. Brian F. Egolf, Jr.
Sen. Cisco McSorley	Sen. Carroll H. Leavell
Rep. Bill B. O'Neill	Rep. W. Ken Martinez
Sen. John Pinto	Sen. William H. Payne
Sen. Sander Rue	Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton	Sen. David Ulibarri

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury, Legislative Council Service (LCS) Cassandra Jones, LCS Elizabeth Katz, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, October 9

Call to Order

Senator Wirth welcomed the committee and the audience.

Report from the Judiciary: Unified Budget and Proposed Legislation

Petra Jimenez Maes, chief justice of the New Mexico Supreme Court, told the committee that New Mexico courts have continued to implement new technologies, including a case management system that will be fully implemented in all of New Mexico's magistrate and district courts by December 2012. She said that the courts will be asking for a three percent increase to court base budgets in order to fill critical vacant positions, upgrade systems, address security needs, reinstate maintenance contracts and keep up with increasing costs for supplies and equipment. The court will also request adequate funding for technology and a five percent increase in compensation for court employees. The chief justice told the committee that 23 new judges are needed based on the courts' workloads, but the judiciary is requesting only nine.

Arthur W. Pepin, director of the Administrative Office of the Courts, referred the committee to a comprehensive list of court budget requests. Mr. Pepin also referred the committee to draft legislation that the judiciary is requesting for the 2013 session. He told the committee that the judiciary is recommending legislation to change requirements regarding eligibility for election or appointment to the office of metropolitan court judge to make them consistent with constitutional requirements for supreme court justices, allow retired peace officers to return to work as court security personnel without suspension of retirement benefits, allow sitting magistrates in districts with a population over 200,000 to run for election as long as there is no break in service, clarify several sections of law, provide a penalty assessment for certain Motor Vehicle Code violations and make courts responsible for traffic citation penalty assessments.

Members of the committee discussed, among other things, the decrease in the judicial budget over the last several years, the importance of adequately funding the judiciary, the need for additional judges and the proposed legislation.

Length of Stay in Detention Facilities: A Profile of Seven Counties

The New Mexico Sentencing Commission (NMSC) presented a report to the committee regarding the length of stay in detention facilities in certain counties in New Mexico. The NMSC explained that in 2004, the New Mexico Association of Counties (NMAC) contracted with the NMSC to conduct a study to estimate the cost of housing arrestees charged with felonies

in New Mexico detention facilities. Fiscal impact was the primary focus of the 2004 study, but a secondary report was produced that analyzed the length of stay for arrestees held on felony charges in six New Mexico detention facilities. In 2011, the NMAC once again contracted with the NMSC to update the length-of-stay study. In the 2011 study, the NMSC looked at arrestees charged with misdemeanor charges as well as those with felony charges.

Linda Freeman, deputy director of the NMSC, told the committee that the study does not measure daily turnover but, instead, looks at a single day to determine how long each arrestee was in custody from booking to release. Ms. Freeman told the committee that the sample consisted of 5,109 arrestees. Of those, 24.4 percent were younger than 25, 34.5 percent were between 25 and 34 and 41.1 percent were 35 or older. Men comprised 83.7 percent of the sample population. Over 66 percent of the arrestees, those awaiting trial, were in custody for 147 days. The median length of stay for those who only spent time sentenced was 163 days. The median length of stay for those who spent sentenced and unsentenced time was 228 days.

Members of the committee discussed several issues with the panel, including the average length of stay for various offenses, the reporting of crime statistics, data collection for the study and the length of time arrestees served unsentenced and after sentencing.

Approval of Minutes

Members of the committee voted unanimously to approve the minutes of the second and third committee meetings for the 2012 interim.

Legislative Proposals from the Attorney General

Gary King, attorney general, presented the committee with drafts of legislation proposed for the 2013 session. The attorney general discussed the need to modernize certain statutes and to change the statute of limitations for certain crimes. He discussed the need for legislation to prohibit texting while driving, to address mortgage foreclosure issues and to clarify the burglary statutes. He also discussed the REAL ID Act and the possible consequences for individuals who carry New Mexico-issued identification cards. The attorney general discussed the implementation of a wage theft task force that deals with time-sheet fraud, employers forcing employees to work overtime without proper payment, employees working off the clock, etc. The task force is considering potential legislation to propose to the legislature. The attorney general also discussed Medicaid fraud, domestic violence issues, government accountability issues and border protection issues.

Members of the committee and the attorney general discussed, among other things, foreclosure issues, potential legislation, the REAL ID Act, magistrate judgeships and rules of evidence.

Proposed Changes to the Children's Code

Yolanda Berumen-Deines, secretary of children, youth and families, discussed changes to the Children's Code that the Children, Youth and Families Department (CYFD) is proposing.

The secretary discussed expanding the purpose of the delinquency code to include reducing disproportionate minority contact, lowering the number of adjudications necessary to be deemed a youthful offender, implementing dual or blended sentencing in order to fully implement the Cambiar model, cleaning up statutory language in order to account for antiquated terms and requiring evaluations in certain circumstances. The secretary told the committee that the CYFD is requesting an expansion of approximately \$2.6 million to establish a 24-bed secure facility in southeast New Mexico to open around October 2013. The secretary said that throughout fiscal year 2012, the Juvenile Justice Division of the CYFD operated at or above capacity, and the CYFD projects that the population in secure facilities will grow by 38 clients over a five-year period. The expansion request also includes an additional 50 full-time-equivalents to provide security, education, behavioral health and other services. Secretary Berumen-Deines told the committee that the expansion is in line with the facility master plan developed three years ago and is also consistent with the Cambiar model.

The secretary gave the committee an update on juvenile justice services. She told the committee that the CYFD is in its fifth year of implementing the Cambiar model. She said that improvements resulting from the Cambiar model include a decrease in facility assaults, a decrease in unit population, multidisciplinary unit teams and intensive, ongoing peer culture group interaction.

The secretary proposed certain changes to the Abuse and Neglect Act, including adding sex offender registration as an aggravating circumstance, a change that is required for federal Child Abuse Prevention and Treatment Act state grants; clarifying that foster children may only be placed in a licensed placement; safeguarding the rights of young adults who are in need of guardianship; allowing any party to file a motion for open adoption and clarifying that a motion for open adoption mediation should only be filed when appropriate; adding a new confidentiality section; clarifying that the CYFD has the authority to conduct abuse and neglect investigations in facilities; allowing law enforcement to conduct a criminal background check on prospective foster parents when a child is initially being removed from parents; and increasing criminal penalties for crimes against children.

David R. Schmidt, executive director of the New Mexico Council on Crime and Delinquency, told the committee that a bill amending the Children's Code should have input from all stakeholders. He emphasized the importance of involving entities other than the CYFD when considering changes to the code. He expressed opposition to several proposed changes, including lowering the number of felony adjudications necessary to be deemed a youthful offender, certain evaluation changes and dual-sentencing models. He expressed support for some proposed changes, including clarifying certain statutes and modernizing the code with gentler language. Mr. Schmidt stressed the importance of including the Corrections Department because of the effect some statutory changes would have. Mr. Schmidt also referred the committee to a letter from Mr. Pepin to Secretary Berumen-Deines, dated July 27, 2012, regarding judicial opposition to some of the CYFD-proposed changes to the Children's Code.

Members of the committee discussed, among other things, amenability hearings, proposed changes to the Children's Code, disproportionate minority contact issues, implementation of the Cambiar model and dual sentencing.

Recess

The committee recessed at 4:55 p.m.

Wednesday, October 10

Uniform Law Commission: Proposed Legislation

Jack Burton, uniform law commissioner, presented the committee with legislation proposed by the Uniform Law Commission for the 2013 session. Mr. Burton proposed legislation to allow an owner of real estate to pass property simply and directly to a beneficiary upon an owner's death. The property would pass by means of a recorded transfer on death deed. Although there is current law that accomplishes this, the bill would fill in certain gaps in the law. Fletcher R. Catron, of Catron, Catron & Pottow, P.A., answered questions from the committee about the proposed legislation.

Mr. Burton also discussed proposed legislation changing provisions in the Uniform Commercial Code and a third bill that would require attorneys to inform defendants of the collateral consequences of conviction. He told the committee that this bill has been enacted in one state and has been introduced in five other states.

Members of the committee asked questions and received answers from Mr. Burton and Mr. Fletcher. The committee discussed the proposed legislation.

Public Improvement District (PID): Mariposa Development

Chris Anderson, vice president of development for Mesa del Sol, described several PIDs that have been successful. Randy Traynor, lobbyist for the New Mexico Home Builders Association, told the committee that current PID legislation was signed into law in 2001. He said that PIDs are primarily utilized in financing infrastructure for development of residential projects, master-planned communities or substantial commercial development and redevelopment. PIDs can also be used to finance on- and off-site infrastructure. The Public Improvement District Act provides for three methods to finance improvements: general obligation bonds, special levy bonds and use charges. PID bonds are the sole obligation of the PID issuing the bonds. PIDs constitute a political subdivision of the State of New Mexico and are separate from the local public body. Mr. Traynor told the committee that some local governments have enacted local ordinances related to PIDs to address issues such as a developer's professional experience and the types of public infrastructure to be financed by the PID. Local governing bodies are required to adopt a resolution approving a petition before a PID can be formed. PIDs are governed by a board of directors that generally exists separate from the local government. The board is required to meet annually and determine the necessary rates of a levy or tax. Mr. Traynor told the committee that the Mariposa PID issued general obligation

bonds with no mill levy cap, which left property owners with a potentially unlimited increase in taxes, and the developers failed to undertake a contractual obligation to pay any revenue shortfalls. Mr. Traynor stressed that PIDs are a good financing tool, but the law needs to be amended to prevent this from occurring again.

Karen Myers, director of the Consumer Protection Division of the Attorney General's Office (AGO), told the committee that property owners in the Mariposa PID contacted the AGO after the Mariposa failure became public. The AGO has met with a representative group as well as many other homeowners in the district to discuss the issue. The AGO has proceeded with an investigation to determine if violations took place. Ms. Meyers told the committee that the AGO is not taking a position on PIDs as a financing tool.

Members of the committee asked questions and received answers from the presenters. Committee members discussed restrictions on PID legislation, government approval for PIDs, the usefulness of PIDs, local government involvement in PIDs, responsibilities that belong to political subdivisions of the state and other issues associated with PIDs.

Independent Redistricting Commissions

Mary G. Wilson, immediate past president of the League of Women Voters of the United States, told the committee that the League of Women Voters supports the creation of a redistricting commission to assist in the process used every decennium to redistrict the New Mexico Legislature and the U.S. congressional districts in the state. She said that the use of a redistricting commission will result in districts that are fair and more representative of the interests of the people rather than the interests of incumbent legislators. Ms. Wilson told the committee that several other states have independent commissions that vary in size from five to 14 members. These states have placed various restrictions on members of the commission and often offer other criteria than those established in the state and federal constitutions and the federal Voting Rights Act of 1965 that should be considered when redistricting.

Richard Mason, leadership team member of the League of Women Voters of New Mexico, told the committee that the league believes that New Mexico needs to reform its redistricting system. He told the committee that in 2001, a special session of the legislature that cost \$700,000 developed a redistricting map that was vetoed by Governor Gary Johnson. The redistricting map was redrawn by the New Mexico Supreme Court in 2002, costing taxpayers millions of dollars. Again in 2011, Governor Susana Martinez vetoed several redistricting bills, which led to a number of lawsuits. The Associated Press estimated the total cost of the 2012 New Mexico redistricting at \$8 million. Mr. Mason discussed the impact that redistricting has on the democratic process and said that it undermines citizens' confidence in the political process.

Members of the committee asked questions and discussed issues with the panel relating to redistricting and the politics involved. Members of the committee discussed recent controversies in states with redistricting commissions, political issues involved in the redistricting process,

concerns regarding elected officials versus appointed commissioners in the redistricting process and other possible benefits and consequences of an independent redistricting commission.

Prosecutions for Leaving Child in a Hot Car

Robert P. "Rick" Tedrow, Eleventh Judicial District attorney, Division I, reminded the committee that he cannot make any comments about specific prosecutions. Mr. Tedrow discussed the importance of determining intent and risk when a child is left in a hot car. He stressed the importance of allowing the judicial branch discretion when determining cases of this nature. He told the committee that in some cases, a child is left in a car as a result of negligence, but in others it is just a mistake. Vincent J. Ward of Freedman Boyd Hollander and the New Mexico Criminal Defense Lawyers Association told the committee that education is one of the most important things that can be done to address the issue of leaving children in cars. He told the committee that a federal program from the U.S. Department of Transportation has focused on public awareness and education.

Members of the committee discussed, among other things, possible prevention efforts, technological solutions to the problem of leaving children in cars, the role the judiciary plays in these cases and the importance of differentiating between a mistake and neglect.

Adjournment

There being no further business before the committee, the fourth meeting of the Courts, Corrections and Justice Committee for the 2012 interim adjourned at 1:20 p.m.

MINUTES

of the

FIFTH MEETING

of the

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

November 29-30, 2012 Room 307, State Capitol Santa Fe

The fifth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Peter Wirth, co-chair, on November 29, 2012 at 10:07 a.m. in Room 307 of the State Capitol.

Present

Sen. Peter Wirth, Co-Chair

Sen. Rod Adair (11/30)

Rep. Joseph Cervantes

Rep. Gail Chasey

Sen. Mary Jane M. Garcia

Sen. Linda M. Lopez

Rep. Antonio "Moe" Maestas

Sen. Richard C. Martinez

Rep. Mimi Stewart

Absent

Rep. Al Park, Co-Chair

Rep. Zachary J. Cook

Rep. David L. Doyle

Rep. Nate Gentry

Rep. William "Bill" R. Rehm

Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon

Rep. Thomas A. Anderson

Sen. Lisa K. Curtis (11/30)

Rep. Brian F. Egolf, Jr. (11/30)

Rep. Dennis J. Kintigh

Sen. Carroll H. Leavell

Rep. W. Ken Martinez

Sen. Cisco McSorley (11/29)

Rep. Bill B. O'Neill

Sen. John Pinto

Sen. Sander Rue

Rep. Sheryl Williams Stapleton

Rep. Cathrynn N. Brown

Sen. William H. Payne

Sen. Michael S. Sanchez

Sen. David Ulibarri

Rep. Richard D. Vigil

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury, Legislative Council Service (LCS)

Douglas Carver, LCS

Cassandra Jones, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, November 29

Call to Order

Senator Wirth welcomed members of the committee and the audience.

Decreased Penalties for Possession of Marijuana

Emily Kaltenbach, state director of the Drug Policy Alliance (DPA), told the committee that the DPA is proposing legislation to decrease penalties for the possession of marijuana. The proposed statute changes would reduce penalties for adult marijuana possession of one ounce or less to no fine or penalty; two to eight ounces would be a civil penalty or fine; and greater than eight ounces would be a misdemeanor. Ms. Kaltenbach told the committee that in New Mexico, possession of up to eight ounces of marijuana is a misdemeanor that can include large fines and jail time. In 2012, there were 3,277 marijuana possession arrests in New Mexico. Marijuana possession arrest rates vary widely throughout the state. Ms. Kaltenbach told the committee that the DPA is concerned with the negative consequences of current penalties, including damage to a person's ability to get a job, child custody, access to health care and high fines to low-income families.

Dan Abrahamson, director of legal affairs for the DPA, told the committee that 15 states have enacted various forms of marijuana decriminalization. Many of these states have replaced criminal sanctions with the imposition of civil fines, while others have reduced marijuana possession from a felony to a fine-only misdemeanor. Mr. Abrahamson emphasized that the proposed legislation is very modest and conservative when compared to decriminalization laws in other states.

Members of the committee discussed, among other things, the decriminalization of marijuana possession in other states; the impact of various fines and penalties; potential consequences and benefits of decreasing penalties for possession of marijuana; legislation to decriminalize marijuana introduced in prior years; and effects of marijuana on health.

Second Judicial District/Bernalillo County Veterans' Court and Service Member Child Custody Act

Rachel Saiz, program director for the Second Judicial District Court, told the committee that the veterans' court at the Second Judicial District Court verifies veteran status and helps those that are eligible to receive veterans' services. Judges and staff from the Second Judicial District Court provide pretrial services, supervision and case management. Treatment plans are created for each veteran in the program. Ms. Saiz told the committee that two veterans graduated

from the treatment program in November. The veterans' court was implemented in November 2011. Two hundred twenty justice-involved veterans were identified in Bernalillo County. Currently, 67 veterans are on pretrial services supervision. The cost of incarcerating the 67 veterans at the Bernalillo County Metropolitan Detention Center (MDC) would be more than \$1.6 million each year. The cost of the veterans' court at the Second Judicial District Court is \$100,000. Ms. Saiz stressed the positive impact that the court has on veterans, their families and their communities.

Amanda Pagan, attorney for New Mexico Family Law, P.C., and chief warrant officer for the Judge Advocate General Office of the New Mexico Army National Guard, discussed the proposed Service Member Child Custody Act and told the committee that short-term alterations to custody and visitation arrangements of deployed service members can have long-term impacts. She told the committee that the legislature should work to balance the interests of service members who are absent due to military service with the best interests of their children. In order to do this, the past, current or potential deployment of a service member should not deprive the service member of legal custody of the member's child. Ms. Pagan told the committee that the law should, instead, recognize a temporary change in custody when a service member parent is deployed and thereafter, custody would automatically revert to the prior arrangement. Ms. Pagan told the committee that no permanent orders altering existing custody arrangements should be entered while a custodial parent is unavailable due to military service.

Members of the committee discussed veterans' services in cases of a less-than-honorable discharge; child custody issues; proposed legislation; judicial discretion in custody cases; funding for the veterans' court; and processes put in place by the military in cases where both parents of a child are deployed simultaneously.

Update on Jail Overcrowding in Bernalillo County

Matthew Rivera, public safety projects coordinator for the MDC, told the committee that the Bernalillo County Detention Center was built in the late 1970s to house 288 inmates. During the 1980s, the original structure was expanded to house 586 inmates. By early 2000, the population grew to almost 1,400 inmates. In December 2002, inmates began occupying the new MDC, which had a design capacity of 2,048 beds. In 2012, the MDC was the forty-seventh largest jail in the nation.

Mr. Rivera told the committee that the MDC has identified immediate, short-term and long-term solutions to deal with the population. Immediate solutions include: amending the STEPS program for probation and parole to incorporate a progressive sanctions program; analyzing MDC work-flow to review internal policies and procedures to identify unrealized efficiencies when processing inmates; analyzing and assessing the current population with the district court; alternative treatment programs with supervision in the community; relocating pretrial services to the Bernalillo County public safety building; and transferring inmates to instate facilities. Short-term solutions include: identifying community resources and partners to increase treatment and services to prospective clients; enhancing prisoner transport; increasing

staffing levels to take on more clients; day reporting with work detail as an alternative to incarceration; strategic plans for adult reform; erecting semi-permanent structures to alleviate some of the crowding at the MDC; transfering inmates to out-of-state facilities; and creating the Bernalillo County Treatment Assessment Center, designed to work with the MDC to identify the level of treatment intensity for clients that need treatment services. Long-term solutions include renovating the Regional Correction Center to house sentenced inmates and creating a System Reform Committee.

Members of the committee discussed the various options laid out by Mr. Rivera. The committee asked questions and offered input and advice. Members of the committee requested clarification of various programs, including a methadone program, at the MDC.

Public Financing of Elections

Viki Harrison, executive director, Common Cause New Mexico, referred the committee to a draft bill. She told the committee that the bill would not expand public financing of elections, but instead would amend current law to conform to a recent U.S. Supreme Court decision and a federal court decision that render the present law unconstitutional. The funding cap for public financing is the same. The change concerns how a candidate would obtain additional funds. The bill would allow candidates to raise small contributions that are then matched by the state.

Members of the committee discussed the proposed legislation.

Modifications to the DNA Identification Act

John F. Krebsbach, administrator of the DNA Identification System, referred the committee to the draft legislation. He told the committee that the draft bill is the same as Senate Bill 357, introduced in 2011 and sponsored by Senator McSorley. He told the committee that the bill addresses some of the issues that had been raised about the location and operation of the DNA Administrative Center. In addition, the bill would require the New Mexico Corrections Department (NMCD) to collect DNA from felons transferred to New Mexico from other states.

Members of the committee discussed the proposed legislation.

Reciprocal Attorney Fees in Certain Civil Cases

Representative Cervantes referred the committee to draft legislation. He told the committee that the legislation would require attorney fees to be awarded as costs to the prevailing party on either side of a contract dispute when the contract provides for attorney fees to one of the parties in the dispute.

Members of the committee discussed previous introduction of the legislation; other states with this type of legislation; and details of the legislation.

Hate Crimes Against the Homeless

Representative O'Neill referred the committee to draft legislation. He told the committee that there have been several incidents in New Mexico over the past decade of hate crimes against the homeless. He said that, often, homeless people are targeted in the same way that other vulnerable populations are targeted, and that homeless people should be included in the Hate Crimes Act. The proposed legislation amends the act to include homeless people.

Wendy Grace Evans, National Center on Family Homelessness, urged the committee to endorse the legislation. She emphasized that homelessness happens to people from all walks of life and stressed the importance of protecting the homeless population.

Father Rusty Smith, executive director of St. Martin's Hospitality Center, also urged the committee to endorse the draft legislation. He relayed personal experiences of working with the homeless population. He told the committee that crimes against the homeless often go unreported.

Members of the committee discussed the draft legislation.

Recess

The committee recessed at 3:20 p.m.

Friday, November 30



Senator Curtis referred the committee to draft legislation. She discussed recent events in the state and in the nation that led to the legislation. She explained to the committee that the bill would require leaders of youth clubs, organizations and teams to report the abuse or neglect of children, including sexual abuse inflicted by any person. She told the committee that some adults, such as teachers, are already required to report abuse of children.

Members of the committee discussed the draft legislation.

Corrections: Legislative Proposals from the NMCD and the Legislative Finance Committee (LFC)

Joe W. Booker, Jr., deputy secretary of operations at the NMCD, referred the committee to a draft bill that would include electronic communication or recording devices in the definition of items that are declared contraband and thus cannot be brought into a facility. Mr. Booker told the committee that this would prevent inmates from contacting victims or witnesses to intimidate them. Mr. Booker stated that sometimes these devices are used to coordinate drug trafficking or to plan escapes. Cell phone calls cannot be monitored by prison staff.

Aurora Sanchez, deputy secretary of administration for the NMCD, referred the committee to draft legislation that would increase the intensive supervision caseload. Ms.

Sanchez clarified that technological advances have increased the ability of probation officers to handle more cases. She told the committee that the legislation complies with LFC recommendations.

Ms. Sanchez referred the committee to draft legislation that would authorize the NMCD to collect a \$100 DNA fee from offenders transferred from another state pursuant to an interstate compact agreement. She told the committee that the bill would close a loophole in the current law and has an effect on DNA lab operations.

Ms. Sanchez referred the committee to draft legislation that would expand the purpose of the NMCD Intensive Supervision Fund. She told the committee that the bill would give the department flexibility to use available funds to provide additional services to offenders, which in turn would protect communities and neighborhoods from further victimization.

Ms. Sanchez referred the committee to draft legislation that would eliminate community correction selection panels. She told the committee that the bill would eliminate state and local selection panels and authorize the NMCD to place offenders into a community corrections program based on the NMCD's placement criteria, which would allow more flexibility in placing offenders in available community programs, allow for better supervision and allow compliance with LFC recommendations.

Jon R. Courtney, Ph.D., program evaluator for the LFC, referred the committee to draft legislation that would provide a four-year phase-in of evidence-based programs in community corrections and intensive supervision. Dr. Courtney told the committee that a 2012 LFC evaluation showed that New Mexico recidivism rates and prison populations are growing. Direction of funds to evidence-based programs have resulted in improvements in public safety and cost savings in other states. Dr. Courtney told the members that the LFC has created the New Mexico Results First Model that can serve as a blueprint for programs that would provide the largest return on investment.

Members of the committee asked questions about and discussed each of the proposed bills. Ms. Sanchez clarified that the bill requiring a phase-in for evidence-based programming is not supported by the NMCD due to the department's inability to meet the requirements on the proposed time line. Members of the committee suggested that the LFC and the NMCD work together to come up with a more lenient time line that can be met by the department.

Independent Public Defender Commission

Representative Maestas referred the committee to House Bill 193, introduced in the 2008 legislative session, to clarify the requirements of creating an independent Public Defender Commission. Phyllis H. Subin, attorney at law, told the committee that the model in the draft legislation is consistent with national best practices. She told the committee that the commission would actively provide the kind of independent oversight that is needed and would be helpful for New Mexico. Rural counties and advocates will be represented. The governor, the speaker of

the house of representatives, the senate president pro tempore, the dean of the University of New Mexico School of Law and the courts will all have the opportunity to make appointments to the commission. Representative Maestas reminded the committee that because of the passage of a constitutional amendment in the 2012 election creating a Public Defender Commission, enabling legislation is needed to provide for the duties and composition of the commission.

Members of the committee discussed the independent Public Defender Commission.

Endorsement of Legislation

Members of the committee discussed and voted on proposed legislation for endorsement. Bill drafts 4, 7, 8, 9, 10, 11, 13, 14, 17, 24, 26, 27, 28, 32, 35, 36, 37, 39, 40, 41, 42, 43, 44, 46 and 49 were endorsed.

In closing, Senator Wirth thanked committee members and staff.

Adjournment

There being no further business before the committee, the Courts, Corrections and Justice Committee adjourned for the interim at 1:27 p.m.

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Legislative Proposals

COURTS, CORRECTIONS AND JUSTICE COMMITTEE LEGISLATION PROPOSED IN THE 2012 INTERIM

- 1. Changes to Sex Offender Registration and Notification Act.
- 2. Require identification of employees by name in the Sunshine Portal Transparency Act.
- 3. Expand liability protections in the Space Flight Informed Consent Act.
- 4. Clarify qualifications of metropolitan court judges.
- 5. Allow retired peace officers to return to work as court security personnel without suspension of retirement benefits.
- 6. Modify funding sources for judicial retirement funds.
- 7. Allow sitting magistrates in districts with a population over 200,000 to run for election as long as there is no break in service.
- 8. Appeals by a municipality from District Court to Court of Appeals.
- 9. Clarify penalty provisions in the Motor Vehicle Code relating to the suspension and revocation of a driver's license.
- 10. Allow dismissal of certain motor vehicle registration, insurance and driver's license citations.
- 11. Provide a penalty assessment for certain Motor Vehicle Code violations.
- 12. Clarify use of certain speed limit violations.
- 13. Traffic citation penalty assessments to the Courts.
- 14. Revise burglary and trespass statutes.
- 15. Modify monetary values and punishments for property crimes Sample Section.
- 16. Revise the statute of limitations for crimes.
- 17. Prohibit texting while driving.
- 18. Increase penalties and require payment of costs and forfeiture of property in the Money Laundering Act.

- 19. Include additional crimes in the offense of Racketeering.
- 20. Authorize administrative subpoenas for electronic systems and to financial institutions.
- 21. Clarify definition of "property" in the Forfeiture Act.
- 22. Modify disposition of forfeited property in the Forfeiture Act.
- 23. Provide for forfeiture of real property in felony violations of the Controlled Substances Act.
- 24. Mortgage Fair Foreclosure Act.
- 25. Revisions to the Medicaid False Claims Act.
- 26. Changes to the Fraud Against Taxpayers Act.
- 27. Revisions to the Family Violence Protection Act.
- 28. Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.
- 29. Prohibit reproduction of child pornography evidence.
- 30. No notice required for prosecution of certain sex offenses.
- 31. Procedures and sunshine for sole source and emergency procurements.
- 32. Governmental contractor disclosures and prohibitions.
- 33. Require disclosure of personal loans under the Financial Disclosure Act.
- 34. Changes to the Uniform Commercial Code.
- 35. Uniform Real Property Transfer on Death Act.
- 36. Uniform Collateral Consequences of Conviction Act.
- 37. Create New Judgeships.
- 38. Decrease penalties for possession of marijuana.
- 39. Service Member Child Custody Act.
- 40. Modify public financing of elections in the Voter Action Act.
- 41. Modifications to the DNA Identification Act.

42.	Include crimes against the homeless in the Hate Crimes Act.
43.	Reciprocal attorney fee awards in certain civil cases.
44.	Duty of youth organizations to report abuse of children.
45.	Prohibit electronic communication or recording devices in prisons and jails.
46.	Require collection of DNA fee when an offender is transferred to New Mexico pursuant to an interstate compact.
47.	Increase intensive supervision caseload from 20 to 40.
48.	Expand the purpose of Corrections' Intensive Supervision Fund.
49.	Changes to the Adult Community Corrections Act.
50.	Require evidence-based programs in community corrections and intensive supervision of offenders.
(leg	gislation endorsed by the committee is in bold)